

Questions and Answers Regarding the Major Provisions Of Chapter 690 of the Public Acts of 2008

Who is defined as a **scrap metal dealer** under the new law?

A scrap metal dealer is any person, including any corporation, firm, company or association, or an employee or agent or thereof, who has the express or implied authority to buy, exchange or deal in scrap metal on behalf of the person. Both the business and any person acting as a scrap metal dealer on behalf of the business must register with the Department of Commerce and Insurance.

What is **scrap metal**?

“Scrap Metal” means any ferrous or nonferrous metal that is no longer used for its original purpose and is capable of being processed for reuse by a metal recycling facility, including, but not limited to, iron, brass, wire, cable, copper, bronze, aluminum, platinum, lead, solder, steel, stainless steel, catalytic converters, or other similar obsolete ferrous or nonferrous metals.

Aluminum cans are not scrap metal.

When do scrap metal dealers have to register?

Dealers must **register by October 1** but you **may** register as soon as public necessity rules are filed by the Department of Commerce and Insurance. It will be up to the dealer to notify the Department when there is a change of address for the registered dealer.

What **transaction records relating to the seller** are required as of July 1, 2008?

No scrap metal dealer may purchase or otherwise acquire scrap metal from a person unless that person presents a **state or federally issued photo identification card that appears valid on its face** to the dealer (if the person does not have a state or federally issued photo identification card, the dealer shall require the seller to present some form of state or federally issued identification AND take a photograph of the person and record the information contained on the identification card prior to the transaction being made) AND provides a **right thumbprint impression, which is clear and complete and does not contain smears or smudges**. (If taking the right thumbprint is not possible, the left thumb or another finger shall be used and the dealer shall identify on the transaction sheet which finger is used.)

If a valid state or federally issued photo identification card is presented, the scrap metal dealer shall record the **name, sex, height, date of birth, residence address and the photo identification card number of the person selling the scrap metal; photocopy the photo identification card presented, and maintain this information as part of the transaction record**. The scrap metal dealer shall also record the **license plate number and make and model of the motor vehicle the seller is driving**. If the vehicle is a commercial vehicle, the buyer shall record the name of the business owning or leasing the vehicle.

Before purchasing scrap metal from a person, the dealer **shall conduct a reasonably diligent inquiry**, based upon the seller, type and quantity of metal offered for sale and other circumstances surrounding the transaction, to determine whether the person selling or delivering the scrap metal has a legal right to do so

and whether a **lawful transaction** may be made. If the person presents a bill of sale, receipt or other document indicating that the person is in lawful possession of the scrap metal, or it was otherwise lawfully acquired, the dealer shall **photocopy such document**.

What **transaction records** relating to the **scrap metal** are required as of July 1, 2008?

Transaction records of each purchase by **date of purchase, name of seller, the amount paid for the scrap metal and the weight of each kind of scrap metal**. A detailed description of the metal being purchased shall also be maintained using the uniform terminology developed by the department. Such entries shall be made in **chronological order** of sale from day to day, as the business is transacted.[Please note that terminology rules have not yet been promulgated by the Department of Commerce and Insurance.]

How long and where must scrap metal transaction records be maintained?

The records must be **maintained on site** for a period of **three (3) years** from the date of the scrap metal sale.

Must the records be available for law enforcement?

Yes. During the usual and customary business hours of a scrap metal dealer, a law enforcement officer has the right to inspect, without a warrant or subpoena, any purchased scrap metals in the possession of the dealer and any records required to be maintained by the dealer pursuant to this new law. A search warrant or judicial subpoena may be executed at any time for inspection of the items.

Do registered dealer to registered dealer transactions have to comply with all the requirements of the new law?

T.C.A. § 62-9-112, exempts scrap metal transactions that take place between a registered scrap metal dealer and another such registered dealer. If the scrap metal is lawfully obtained by the seller and, at the time of the transaction may lawfully be sold for scrap, the terms of sale between two (2) registered dealers can be determined by the parties.

What are the special rules regarding payment if the person is offering for sale scrap metal that in whole or in part consists of **copper** or an **unattached catalytic converter**?

First, if the person is selling as an agent or employee of a business, payment for such metal **must be made only by check or money order mailed to the business address** of the business **AND the payee on the check must be the name of the business**. There is an exception: a business that sells on a regular or frequent basis may annually preregister with a scrap metal dealer a list of employees who are authorized to sell on behalf of the business. A scrap metal dealer may pay an authorized, preregistered employee by any method, on site, and at the time of the transaction.

The rules are different if the person selling is **not an employee or agent of a business**, in which case the **payment for the scrap metal must be by check, money order or voucher**, at the option of the seller. **If the seller elects payment by check or money order, it shall be mailed to the physical address provided on the driver license the seller used for identification. If the seller did not produce a driver license with a physical address on it, payment must be by voucher.** If a voucher is not redeemed by an authorized person within six (6) months of the date of the transaction, the voucher expires and may no longer be honored by the dealer. If the seller elects payment by voucher, or if payment must be by voucher, the dealer shall give the seller a voucher for the amount of metal purchased. **Such voucher must include certain information (date of purchase, name of seller, the amount paid for the scrap metal and the weight of each kind of scrap metal, a detailed description of the metal being purchased** using the uniform terminology developed by the department) and the date on which the voucher can be redeemed. The voucher may only be redeemed by the person whose name appears on the voucher as the seller, or by such person's heirs or legal representative. **No voucher may be redeemed by the voucher holder, or such holder's heirs or legal representative, sooner than five (5) days from the date of the scrap metal transaction.**

Can the dealer charge for issuing checks required by this new law?

The department will by rule establish a reasonable fee a dealer may charge the person selling the scrap metal for the dealer's administrative costs of processing and issuing checks required by this new law. Such fee may vary according to the dollar value of the purchase or the weight of the purchase but shall, in no event, exceed five dollars (\$5) per check. [The rules have not yet been adopted by the department.]

What is a dealer to do with unused vouchers?

The dealer has one (1) year from the date of the voucher's expiration (the voucher expires after six (6) months) to transmit the transaction amount to the department. The procedure to accomplish this will be part of the department's rules.

Can you purchase from minors?

No

Can you purchase from a person who does not have or refuses to present a state or federally issued identification?

No

Can you purchase scrap metal from a person that you as a dealer cannot determine has a legal right to sell the scrap?

No

Are there special rules to protect government property, historical markers and cemeteries?

Yes, it is a Class A misdemeanor (and possibly subject to other theft offenses) to knowingly sell or attempt to sell to a scrap metal dealer or for a scrap metal dealer to knowingly purchase or attempt to purchase the following types of scrap metal (unless the person attempting to sell the scrap metal provides reasonable, written documentation that the seller is the owner of the scrap metal or is an employee, agent, or other person authorized to sell the scrap metal on behalf of the owner and then the dealer must make a photo copy of any such documentation and retain it as part of the transaction record):

- (1) Scrap metal marked with the initials of an electric, telephone, cable, or other public utility, or an electric or telephone cooperative;
- (2) Utility access covers;
- (3) Street light poles and fixtures;
- (4) Road and bridge guard rails;
- (5) Highway or street signs;
- (6) Water meter covers;
- (7) Traffic directional and control signs;
- (8) Traffic light signals;
- (9) Any scrap metal visibly marked or painted with the name of a government entity, business, company, or the name of the owner of such metal (the scrap metal must be marked or painted in accordance with a uniform scrap metal marking system to be adopted by department rules);
- (10) Property owned by a telephone, cable, electric, water, or other utility, an electric or telephone cooperative, or a railroad, and marked or otherwise identified as such; and
- (11) Unused and undamaged historical markers, or grave markers and vases.

Are there special rules for air conditioner coils or condensers (and any part thereof)?

Yes. It is a Class A misdemeanor (and possibly other criminal offenses) for a scrap metal dealer to pay cash to a person who presents an air conditioner evaporator coil or condenser, in whole or in part, for sale as scrap, or for such dealer to make payment of any kind at the time of the transaction.

Such may **only be sold for scrap by an authorized agent, representative or employee** of one of the following:

- (1) A licensed HVAC contractor (*"Licensed HVAC Contractor" means a person holding a license from the state board for licensing contractors with a CMC, MC, CMC-C, or MC-C classification*) who acquired the evaporator coil or condenser in the performance of contracting as defined in § 62-6-102;
- (2) In a jurisdiction exempt from the requirements of Title 68, Chapter 120, of the Tennessee Code, by the provisions of T.C. A. § 68-120-101, a company meeting all local or municipal requirements to obtain a permit from that jurisdiction to repair, replace and install HVAC units containing copper evaporator coils or condensers;
- (3) In a jurisdiction exempt from the requirements of Title 68, Chapter 120, Tennessee Code, by the provisions of T.C.A. § 68-120-101, where the exempt jurisdiction does not require a permit to repair, replace and install HVAC units containing copper evaporator coils or condensers, by a company holding a

current business tax license, with a Class 4 classification, or a current sales tax identification number indicating the business as that of an HVAC installer or repairer; or

(4) In a jurisdiction not exempt from the requirements of Title 68, Chapter 120, Tennessee Code, a company holding a current business tax license, with a Class 4 classification, or a current sales tax identification number indicating the business as that of an HVAC installer or repairer.

The person offering the air conditioner evaporator coil or condenser for sale as scrap must have in such person's possession documentation that the company for whom it is being sold is a company described above and that the person selling the evaporator coil or condenser is an authorized agent, representative or employee of that company.

Payment must be made by check or money order, mailed to the business address of the company for whom the metal is being sold, and the name of such company must be the payee on the check.

Are there special rules for **metal beer kegs**?

It is a Class A misdemeanor (and also possibility other criminal offense) for a scrap metal dealer to knowingly purchase or possess a metal beer keg, whether damaged or undamaged, or any reasonably recognizable part thereof, on any premises that the dealer uses to buy, sell, store, shred, melt, cut or otherwise alter scrap metal.

What are the special rules applicable to **governmental entities, regulated landfills and solid waste processing facilities owners**?

A governmental entity, regulated landfill or solid waste processing facility owner may sell any scrap metal donated to it, or otherwise lawfully obtained by it without compensation. Payment for scrap metal sold by a governmental entity or regulated landfill owner shall be made by check or money order to the governmental entity, or the owner of the landfill or solid waste processing facility. Such check or money order shall be mailed to the business address of the governmental entity, or the owner of the landfill or solid waste processing facility. The payee on the check shall be in the name of the governmental entity, or the owner of the landfill, or solid waste processing facility. (A governmental entity, regulated landfill, or solid waste processing facility owner may register as a scrap metal dealer to come within the dealer to dealer exemption.)

What are the Department of Commerce and Insurance's responsibilities under the new law?

The Department of Commerce and Insurance will be adopting rules regarding the following four items:

1. Establishing registration and renewal fees to cover the cost of the program;
2. Establishing a reasonable fee a dealer may charge for issuing checks required by the law;
3. Developing a uniform scrap metal marking system; and
4. Developing a uniform terminology list for use in the transaction records.

The Department will also be studying the cost and feasibility of compiling and implementing a "no-buy" list and report its finding to the Tennessee General Assembly by January 31, 2009. The Department will also be creating needed registration, renewal and other forms and administering the registration program. The purpose of the registration requirement is to provide law enforcement with a list of who is in the business of buying scrap metal.

The Department has no disciplinary authority over the registered dealers. The only reason for the Department to deny an application for registration is if the person has a conviction for theft, burglary or vandalism where the offense involves scrap metal or a violation of the scrap metal dealer registration act. If a dealer is convicted of a violation of any provision of the Act, or the criminal offense of theft, burglary or vandalism if such offense involved scrap metal, their registration is immediately revoked by operation of law. It is the responsibility of the law enforcement agency responsible for the conviction to transmit a copy of the judgment of conviction to the Department.